

IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI

SECOND APPEAL NO. 37 OF 2001

Shrimat Sachidanand
Saraswati Guru
Shrimat Purnananda
Saraswati Swami,
Shri Saunsthan Kaivalyapur,
Kavlem, Chief Trustee of
Kavlem Math (Prelado De Davlem
Moto), bachelor, residing at
present at Kavlem, Ponda, Goa.

... Appellant.

versus

1. Mr. Sadanand Dattatray
Gaitonde, major;
2. Mr. Ramakant Dattatray
Gaitonde, major;
3. Miss Sharayu Dattatray
Gaitonde, major;
4. Mr. Audhut Dattatray
Gaitonde, major;
5. Jayanti Audhut Gaitonde,
major;
6. Laxmikant Dattatray
Gaitonde, major;
7. Ujvala Gaitonde, major;
8. Suresh Dattatray Gaitonde,
major;
9. Nayan Suresh Gaitonde,
major;
10. Umakant Dattatray Gaitonde,
major;
11. Daya Umakant Gaitonde,
major;
12. Prafulla Dessai, major;
13. Shivaji Dessai, major;
14. Sunanda Audhut Verlekar,
major;

15. Audhut Verlekar, major;
16. Shashikant Dattatray
Gaitonde, major;
17. Durga Narendra Rege,
major, (deceased) through
legal representatives:
- 17a. Narendra Rege;
b. Mrs. Madhushri Ashok Tupat;
c. Mrs. Ashok Tupat;
d. Mrs. Meenasha Manish
Divecha;
e. Mr. Manish Divecha;
18. Narendra Rege, major;
The Respondent Nos.1 to 5
and 8 to 11 and 16 are
presently residing at
Panaji, Goa and the Respondent
Nos.6 and 7 are presently resi-
ding at Sankhali and the Respon-
dent Nos.12 and 13 are residents
of Mandrem, Pernem and the
Respondent Nos.14, 15, 17(a) to
19(e) and 18 are residents of
Corlim, Mapusa, Goa. ... Respondents.

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Mr. M. S. Usgaonkar, Senior Advocate with Mr.
Mahesh Rao, Advocate for the Appellant.

Mr. M. S. Sonak, Advocate for the Respondent Nos.4
and 10.

CORAM: P. V. HARDAS, J.

DATED: 18TH JULY, 2002.

ORAL JUDGMENT

Heard Mr. M. S. Usgaonkar, learned Senior
Advocate with Mr. Mahesh Rao, learned Advocate
appearing for the Appellant and Mr. M. S. Sonak,
learned Advocate appearing for the Respondent Nos.4
and 10.

2. This Court by its Order dated 4th October, 2001, had put the parties to notice that the Second Appeal would be disposed of finally at the stage of Admission and the Respondents were asked to show cause as to why the matter was not remanded to the Trial Court for re-hearing. The Trial Court was asked not to pass final Judgment in the matter.

3. The Second Appeal has been filed against the Judgment and Decree of the Additional District Judge at Mapusa in Regular Civil Appeal No.27 of 1992, dated 18th April, 2001, by which the learned lower appellate Court had quashed and set aside the Judgment and Decree passed by the learned Civil Judge, Senior Division, Bicholim, Goa, in Special Civil Suit No.94 of 1976, dated 2nd April, 1992 and had remanded the suit back to the learned Trial Court with a direction to re-hear the arguments afresh after giving the parties opportunity.

4. After hearing the learned Advocates appearing for the parties, Mr. M. S. Sonak, learned Advocate appearing for the Respondent Nos.4 and 10, on instructions states that the Judgment and Decree passed by the learned lower appellate Court, in Regular Civil Appeal No.27 of 1992, dated 18th April, 2001, be set aside and the Appeal be remitted back to

the learned lower appellate Court for decision on merits keeping all the points open to the parties.

5. In view of this, the Judgment and Decree passed by the learned Additional District Judge at Mapusa, in Regular Civil Appeal No.27 of 1992, dated 18th April, 2001, is hereby quashed and set aside. The said Appeal is remitted back to the learned lower appellate Court for decision afresh. The points urged in the Appeal by the parties before the learned lower appellate Court are kept open. The learned lower appellate Court shall as far as practicable decide the Appeal on merits as expeditiously as possible.

6. Since, the Appeal is remitted back to the learned lower appellate Court for decision afresh, interim orders passed by the learned lower appellate Court are restored.

7. In view of what is stated above, Second Appeal No.37 of 2001 is allowed on the aforesaid terms with no order as to costs.

P. V. HARDAS, J.